COURT NO. 2

HIGH COURT OF UTTARANCHAL AT NAINITAL.

First Appeal No. 50 of 2001
(Old No. 254 of 1996)

Tehri Hydro Development
Corporation and another. … **Appellant.**

Versus

Inder Singh
And others …. **Respondents.**

Coram: Hon. P.C. Verma, J.
Hon. B.S. Verma, J.

This is an appeal under Section 54 of the Land Acquisition Act against the judgment and award dated 14-07-1995, made by the District Judge, Tehri Garhwal, in Land Acquisition Reference No. 1 of 1990, Inder Singh and others Vs. U.P. State.

The Notification under Section 4 of the Land Acquisition Act was issued on 11-4-1981, though mentioned as 6-12-1980 in the impugned order and thereafter, notification under Section 6 of the Act was issued on 8.10.1983, which too has been written as 6.10.1983 by the reference court. Ultimately, the Special Land Acquisition Officer (S.L.A.O.) has made the impugned award vide order dated 11-9-1986 thereby assessing the value of the land @ Rs. 6/- per Sq.ft. Total award has been made for the area to the tune of 7412 Sq.ft. The land was held jointly by Inder Singh and his sons Manjit Singh, Pradip Kumar, Vinod Kumar, Harish and Kanwal Kishor. Inder Singh has died on 29.9.2001.. Under wrong legal advice, wife of late Inder Singh claiming her title moved an application for substitution, under Order 22, Rule 4 C.P.C. Later-on, an application has been moved with a prayer that the application dated 21.8.2002 should be treated as information to the Court about the death of Inder Singh under the provisions of Order 22, Rule 10-A of the C.P.C. as the defendants of the case cannot move application

for substitution. No further steps have been taken for substituting the legal heirs of Inder Singh by the appellant.

We have heard learned Additional Advocate General, Sri U.U. Uniyal as well as learned counsel for the respondents Sri Arvind Vashisth and have gone through the entire material on record.

According to the learned counsel for the State, the sons of late Inder Singh have already been brought on record, but in view of the information given by Smt. Deoki Rani, wife of late Inder Singh that she is the owner of the property in respect of the share of late Inder Singh on the basis of a Will, the appellant ought to have taken steps for substitution within a period of ninety days after 21.8.2001, i.e. after the information of death of the decease Inder Singh was communicated to the Court. After this information, no substitution application h as been moved, therefore, the appeal shall stand abated against late Singh and his legal heir Smt. Deoki Rani.

Learned counsel for the appellant submitted that the sole ground pressed in this appeal is that the Tehri Hydro Development Corporation **(T.H.D.C.)** is a necessary part and the land was acquired for construction of the Tehri Dam by T.H.D.C. and the compensation was to be paid by the T.H.D.C. T.H.D.C. is an incorporate body and a separate entity other than the State, therefore, the T.H.D.C. is a proper party to the case. In view of the law laid down by the Apex Court judgment in the case of ***"U.P.Awas Evam Vikas Parishad vs Gyan Devi (Dead) by LRS and others" [(1995) 2 Supreme Court Cases, page 326],*** being a proper party, T.H.D.C. must be impleaded as a party, therefore, it has a right to contest the case and to lead evidence in the proceedings before the Reference Court.

In view of the discussion above, we are of the opinion that the appeal deserves to be allowed and the impugned judgment and award is liable to be set aside. It is held that the Tehri Hydro Development Corporation is a proper party to the case, under appeal. It is a case fit for remand.

Accordingly, the appeal is allowed and the judgment and award, under appeal, is set aside. The learned counsel for the T.H.D.C. shall appear before the District Judge/Reference Court concerned on 11.10.2004, which shall give opportunity of hearing to the T.H.D.C. after impleading it as respondent to the case and to lead evidence in the case, if any, the reference case shall be taken up day-today for hearing and the District Judge concerned shall conclude the hearing of the reference within a period of one month from 11-10-2004 and shall decide the reference afresh. However, it is made clear the amount of award already deposited with the reference court shall not be released and no recovery shall be made of the amount, which has already been paid to the claimants. No order as to costs.

The original record of the case shall be transmitted to the District Judge Tehri Garhwal/Reference Court within *three days through Special Messenger.*

27-09-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP